



February 6, 2006

NEPA Draft Report Comments
c/o NEPA Task Force
Committee on Resources
1324 Longworth House Office Building
Washington, D.C.
Nepataskforce@mail.house.gov

Dear NEPA Task Force:

Safari Club International (SCI) and Safari Club International Foundation (SCIF) (collectively "SCI") submit these comments in support of many of the draft recommendations to modify the National Environmental Policy Act and its regulations. With respect to some of the proposed amendments, we have added our own suggestions about potential modifications to those offered by the NEPA Task Force's "Initial Findings and Proposed Recommendations." We have formatted our comments to follow the sequence of the proposed recommendations as they have been identified in the NEPA Task Force Report dated December 21, 2005.

SCI and its sister organization SCIF were formed by sportsmen to represent sportsmen and their concerns about wildlife conservation and management issues. SCI protects the freedom to hunt and promotes sound wildlife conservation and management. SCIF supports and manages wildlife conservation programs worldwide and promotes sound, scientifically based management of wildlife through conservation hunting programs. With approximately 200 chapters and over 48,000 members around the world, SCI hunter conservationists are dedicated to conservation of natural resources and advocacy for the hunting community. SCI and SCIF are convinced that NEPA reform will further their purposes and activities.

NEPA Task Force Recommendations

Group 1- Addressing Delays in the Process

Recommendation 1.1: SCI supports the Task Force's recommendation to amend NEPA to define "major federal action." While it may be difficult to include in the statutory definition examples of actions that Congress would or would not consider to be "major," it would be possible for Congress to include such examples in committee reports and other legislative history materials in order to guide the agencies and the courts. In addition, we recommend that the definition make clear that a project or program would not rise to the level of "major federal action" simply because federal funds are being used to support the activity. An important component of this distinction should be the clarification that projects and programs

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being conducted by states should not be classified as “major federal action” whether or not the state projects or programs utilize federal funds.

Recommendation 1.2: SCI questions whether the setting of mandatory timelines for the completion of NEPA documents might invite more harm than good. It is possible that the setting of such timelines would be unrealistic and/or unfair to the agencies that must comply with these deadlines. It would be best to avoid replicating the scenario currently being experienced by the U.S. Fish and Wildlife Service, an agency that is struggling to meet the time mandates for listing species and designating critical habitat imposed by the Endangered Species Act. It is impossible for SCI to comment substantively on this recommendation without learning more about the methodology by which these deadlines would be imposed and the potential ramifications of failure to comply with these deadlines. Consequently, SCI would like to reserve the opportunity to comment on this recommendation after more details about the logistics are made available.

Recommendation 1.3: SCI supports the creation of unambiguous criteria for the use of Categorical Exclusions (CE), EAs and EISs. SCI also suggests that the recreation and conservation communities, as well as the state agencies, be allowed to participate in the process by which these criteria are developed. The only unclear thing is whether this recommendation contemplates the creation of criteria for developing CEs, the codification of the current regulatory CEs, and/or the creation of additional “Congressional” CEs.

Recommendation 1.4: SCI supports the NEPA Task Force recommendation that would limit the agency’s obligation to provide supplemental documentation in situations where there have not been substantial changes to proposed activities or significant new circumstances. SCI suggests that the recommendation include language that would result in fewer supplemental documents, as once the agency has studied an issue, the need to further analyze the issue lessens.

Group 2 – Enhancing Public Participation

Recommendation 2.1: SCI cannot support a recommendation that would uniformly direct CEQ to prepare regulations giving greater weight to localized comments than the consideration given to comments from so-called “outside groups.” While local groups and citizens often have far more interest and information about a particular action, this is not always the case. On occasion, local groups work with their national affiliates to obtain information and expertise relevant to a particular situation. Groups from other areas who have past experience with a particular issue can offer information in a situation not previously experienced by local citizens. Groups from outside the area of the activity may use the area involved, as much as or possibly more than local residents. Consequently, comments should be weighted by their content, relevance, and helpfulness, not a potentially irrelevant factor such as local residence or geographic origin. If the individual or group that submits the comments shows an interest level or knowledge base that merits the agency’s consideration, then the comment should be considered accordingly.

Recommendation 2.2: SCI does not support the recommendation to amend NEPA to codify EIS page limits, unless there is a corresponding reduction in what analysis and data the EIS must contain. The length of an EIS should be dependent upon the amount of scientific

information available about the possible impact of an activity. While guidelines may be appropriate, strict mandates would not reflect the possibility that a particularly complicated or detailed issue could require lengthy discussion or background material. Also, any legislation would have to be clear whether this page limitation includes the often times lengthy appendixes and documents incorporated by reference into the EIS.

Group 3—Better Involvement for State, Local and Tribal Stakeholders.

Recommendation 3.1: SCI supports the recommendation to grant cooperating agency status to tribal, state and local stakeholders unless the agency determines such participation would not be helpful. The Task Force should also be aware that there is some potential conflict between this recommendation and those recommendations that advocate shortening the time to complete NEPA documents and limiting pages.

Recommendation 3.2: SCI strongly supports the recommendation that would direct CEQ to prepare regulations that would mandate that existing state environmental review processes, that are the functional equivalent of NEPA processes, would satisfy NEPA requirements. The recommendation should perhaps include a provision that directs CEQ to establish the test or criteria by which state environmental protection processes can be determined to meet NEPA requirements. Also, the proposed legislation should make clear that courts must review the NEPA documents, even those generated pursuant to state environmental laws, under Federal, not state, standards.

Group 4 – Addressing Litigation Issues.

Recommendation 4.1: SCI supports the recommendation that would amend NEPA to create a citizen suit provision, but only if that provision adopts concrete standards for participation in litigation over a NEPA issue. SCI notes that the Supreme Court already has established “procedural” standing standards, under which a party wishing to challenge an agency’s compliance with NEPA must establish that he has a concrete interest that will be adversely impacted by the proposed agency action underlying the NEPA process. In other words, a party cannot claim an injury *merely* because the agency failed to comply with NEPA. Any statutory limits on standing should not weaken this standard.

SCI particularly supports the idea of prohibiting federal agency from entering into settlement agreements that forbid or severely limit the activities for “businesses” that were not part of the litigation, but SCI strongly recommends that this provision be modified to offer the same protections for “organizations” that have a direct interest in a particular activity that is affected by a proposed settlement. SCI similarly supports the proposed amendment to allow businesses and individuals affected by a proposed settlement to be included in the settlement negotiations, but only if that proposed amendment includes affected “organizations” in the group of those who are permitted to participate.

As noted above, SCI agrees with the idea of establishing clear guidelines for standing to challenge an agency decision, but also recommends that the legislation include a section establishing that persons or entities that satisfy the Federal Rules of Civil Procedure rule for intervention be allowed to intervene as a defendant in NEPA cases. The Ninth Circuit case law currently excludes defendant-intervenors in the merits phase of NEPA litigation, even if

the person or entity would be directly harmed by an adverse decision. Nothing in NEPA or the Supreme Court's jurisprudence on intervention supports the Ninth Circuit's position.

Recommendation 4.2: SCI supports the recommendation to amend NEPA to add a requirement that agencies "pre-clear" projects only if this would not unnecessarily lengthen the NEPA process and would not create burdensome and expensive obstacles that would delay the completion of activity. SCI again notes that there is some tension between this section and the time deadline recommendation.

Group 5 – Clarifying Alternatives Analysis

Recommendation 5.1: SCI supports an amendment to NEPA that would require that agencies only analyze economically and technically feasible alternatives in NEPA documents.

Recommendation 5.2: SCI does not support the recommendation that an "agency would be required to reject [the no action] alternative if on balance the impacts of not undertaking a project or decision would outweigh the impacts of executing the project or decision." SCI opposes such a provision because it would, for the first time, impose substantive decision-making mandates on the agencies. Congress's original intent, as upheld numerous times by the courts, was to require the agency to *consider* the environmental impacts of proposed action, but not to mandate the agency decide the issue one way or the other. Under NEPA currently, the agencies remain free to choose any legal alternative, even one that is not the most environmentally beneficial. Requiring a particular decision based on a weighing of environmental impacts would set a dangerous precedent that NEPA is not just a "procedural" statute.

Group 6 – Better Federal Agency Coordination

Recommendation 6.1: SCI supports the proposal to direct CEQ to promulgate regulations to encourage more consultation with stakeholders.

Group 7 – Additional Authority for the Council on Environmental Quality

Recommendation 7.1: SCI supports the creation of a NEPA Ombudsmen with decision-making authority, but suggests that the legislation or legislative history clarify what types of "conflicts" would be resolved. SCI also suggests that a committee, rather than an individual, be given this authority. The committee could be assembled of representatives of the agencies most often required to comply with NEPA. The committee would make decisions by majority vote.

Recommendation 7.2: SCI supports the recommendation to direct CEQ to control NEPA related costs.

Group 8 – Clarify the Meaning of "Cumulative Impacts"

Recommendation 8.1: SCI supports the recommendation to clarify how agencies would evaluate the effect of past actions for assessing cumulative effects. SCI would hope that this

recommendation would help to reduce unnecessary analyses on cumulative impacts, for example when the agency can make that assessment by reviewing and extrapolating existing data.

Recommendation 8.2: SCI supports the recommendation to make clear which types of future actions are appropriate for consideration under the cumulative impact analysis and to require analyses only for concrete proposals rather than for actions that are “reasonably foreseeable.” The legislation should define “concrete” as something that is relatively certain to occur, whether it is a proposal that is highly likely to be adopted or an already adopted proposal that will occur unless highly unusual or unexpected events occur. Once again, SCI would hope that this recommendation would reduce redundancy and would enable the agencies to avoid being forced to conduct entirely new analyses if existing data can simply be extrapolated to determine the cumulative impact of projects.

Group 9 – Studies

Recommendation 9.1: SCI strongly supports the recommendation for CEQ to study NEPA’s interaction with other Federal environmental laws toward the goal of eliminating the unnecessary duplication of efforts by federal agencies that are statutorily and regulatorily required to determine the environmental impacts of proposed actions. The recommendation, as it stands in the Task Force report, discusses only study and evaluation, but does not recommend the logical next step, which would be a statutory change that would eliminate or reduce unnecessary duplication of efforts.

Recommendation 9.2: SCI supports a study of federal agency NEPA staffing issues if this would improve the efficiency and effectiveness of the NEPA process.

Recommendation 9.3: While SCI generally supports the idea of a CEQ study of NEPA’s interaction with state “mini-NEPAs” and similar laws, it is unclear how this recommendation and Recommendation 3.2 interact. Recommendation 3.2 directs CEQ to prepare regulations allowing state environmental review processes to satisfy NEPA requirements. That recommendation suggests that Congress has already determined that there is duplication and state environmental review processes can effectively substitute for NEPA review. Thus, the purpose of the study is unclear.

Thank you for the opportunity to comment on these creative and well reasoned proposed improvements to the current NEPA process. We hope that you will consider our suggestions for enhancements of the Task Force recommendations and would be happy to discuss with you any or all of our comments in greater detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Simpson", with a stylized, cursive script.

Mike Simpson
President,

Safari Club International
Safari Club International Foundation